G. SPANOLIOS v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) February 23, 1972]

[Singapore — Magistrate's Appeal No. 63 of 1971]

Criminal Law and Procedure — Charge — Pollution of port waters — Singapore Port Regulations, 1970, regs. 101(2) & 111(b).

Port Authority — Pollution — Ship at anchorage — Discharge of waxy residue from damaged side of ship — Liability of — Singapore Port Regulations, 1970 regs. 101(2) & 111(b).

The appellant, the master of m.v. "Marimunda", was charged with polluting the port waters, an offence under regulation 101(2) of the Singapore Port Regulations, 1970, punishable under regulation 111(b) of the said Regulations. He was convicted and sentenced to pay a fine of $200, against which he appealed.

The issue raised in this appeal was that on the evidence, the master of the vessel did not cause the discharge of the waxy residue from the vessel into the sea, within the meaning of regulation 101(2) of the said Regulations, and that the learned magistrate was wrong in law in holding that this regulation created an offence of strict liability.

Held, dismissing the appeal: there was clear evidence to warrant a conviction. The learned magistrate was correct in holding that the master had "caused to be discharged" the waxy residue within the meaning of regulation 101(2) of the Singapore Port Regulations, 1970.

MAGISTRATE'S APPEAL.

G. P. Selvam for the appellant.

P. O. Ram (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The appellant, the master of m.v. "Marimunda", was charged before a magistrate's court on the following charge: —

"You, Captain G. Spanolios, Master of vessel 'Marimunda', are charged that you, on or about the 30th day of April, 1971, at about 9.30 a.m., whilst your vessel 'Marimunda' was anchored at the Eastern Petroleum Anchorage, Singapore, did without lawful excuse and written permission by the Port Master cause waxy residue to be discharged from the damaged port side bow of the vessel 'Marimunda' into the waters of the Republic of Singapore, and you have thereby committed an offence under regulation 101(2) of the Singapore Port Regulations, 1970 and punishable under regulation 111(b) of the said Regulations".

He was convicted and sentenced to pay a fine of $200 and now appeals against his conviction and sentence. The facts are these. The m.v. "Marimunda" was involved in a collision in Indonesian waters on 20th April 1971. At the time the vessel was carrying a cargo of waxy residues. The collision resulted in damage to the No. 1 centre tank which had this cargo in it and to the No. 1 port tank which had no cargo in it. The collision caused some of the cargo in No. 1 centre tank to flow into the damaged No. 1 port tank.

The vessel made its way to Singapore and arrived in Singapore waters on 22nd April 1972. On arrival the Port of Singapore Authority was informed and the vessel was boarded by a Mr. G. H. Warter, Controller, Harbour and Safety Division, Port of Singapore Authority. Mr. Warter inspected the damage to the ship and he found the cargo was in solid form, that there was no discharge of the cargo into the sea, and therefore authorised the vessel's entry into Singapore. Two days later the vessel left Singapore for Pulau Sambu to discharge its cargo and returned to Singapore on 28th April 1971 for repairs. At Pulau Sambu all the cargo except the cargo in the two damaged tanks was discharged. The undischarged cargo was not discharged because it had solidified as the result of water in the damaged tanks.

On 30th April 1971 on its return from Pulau Sambu, the vessel was anchored at the Eastern Petroleum Anchorage. It was then carrying out a gas-freeing operation to clean up the other empty tanks and to get ready for repairs to be carried out at a repair shipyard. Hot sea water was used to clean the empty tanks, the dirty water being discharged into barges by means of a pipe line connecting the tanks and the barges. At the time of this operation the ship was lifted so that the damaged portion was above the water line.

The Singapore agents of the vessel employed Selco, ship repairers, to plug the damaged sides of the vessel to enable the damaged tanks to be cleaned. The divers employed by Selco to plug the holes in the ship spread a canvas boom over the damaged portion and then carried out the repairs. The master of the vessel lowered a life boat and a life raft and instructed that a member of his crew be present day and night to collect any of the cargo waxy substance that dropped into the sea. A total of about two kilos of the waxy substance was so collected from the sea.

However, on 30th April 1971 one Yusof, Assistant Port Safety Inspector found the boom heavily stained with black residue and also saw some black residue floating near the port stern. He said the boom was ineffective to prevent this black residue from escaping into the sea because both ends of the boom were exposed to the sea.

The only point of substance raised in the appeal is that on the evidence the master of the vessel did not cause the discharge of the waxy residue from the vessel into the sea within the meaning of regulation 101(2) of the Singapore Port Regulations 1970 and that the magistrate was wrong in law in holding that this regulation creates an offence of strict liability.

In my judgment there was clear evidence to warrant a conviction. Selco were employed by the Singapore agents of the vessel to plug the damaged side of the vessel to enable the damaged tanks to be cleaned. The master, according to his own evidence, did not brief Selco's divers, when they came aboard, on the work they had to do and all he did was to watch them working from the deck of the ship. He knew or at the least anticipated that some of the waxy residue would fall into the sea. In those circumstances I am of the opinion that the magistrate was correct in holding that the master had "caused to be discharged" the waxy residue within the meaning of regulation 101(2) of the Singapore Port Regulations 1970. The appeal is dismissed.

Appeal dismissed.

Solicitors: *Drew & Napier.*